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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 647

THE STATE OF WISCONSIN on the Relation of American Motors Corporation, a foreign corporation,
Respondent,

vs.

INDUSTRIAL COMMISSION OF THE STATE OF WISCONSIN
Respondent,

ROBERT BORUM,
Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner Robert Borum prays that a Writ of Certiorari issue to review the Order of the Supreme Court of Wisconsin dated September 4, 1964, dismissing Petitioner's appeal.

OPINIONS BELOW

The opinion of the Supreme Court of Wisconsin, is attached hereto as Appendix, page 10.

JURISDICTION

The jurisdiction of this court is invoked under the provisions of 28 U. S. Code, Section 1257(3). The Courts of Wisconsin, contrary to the provisions of Article I, Section 9 of the Wisconsin Constitution refuse to grant petitioner a full rehearing and remedy for all injuries sustained to his person in an industrial accident. The failure to grant petitioner a full hearing also violates Article XIV, Section I, United States Constitution in that petitioner is being deprived of rights without due process of law.

QUESTION PRESENTED

The question is whether the Courts of the State of Wisconsin, by denying petitioner a hearing as to all of his injuries incurred in an industrial accident, March 31, 1955, have in substance denied him that remedy at law or due process of law as guaranteed by Article XIV, Section I, United States Constitution and Article I, Section 9, Wisconsin Constitution.

The Courts of the State of Wisconsin deny a person injured in an industrial accident the right to more than one hearing, and they hold that the Industrial Commission of the State of Wisconsin is without jurisdiction to entertain a request for an additional hearing for injuries arising out of the original accident but medically unascertained or unascertainable at the time of its original hearing.

STATUTES INVOLVED

United States:

The Fourteenth Article, Section I of the United States Constitution the relevant portion is as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens

of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; . . ."

Wisconsin:

The first Article, Section 9 of the Wisconsin Constitution states:

"Every person is entitled to a certain remedy in the laws for all injuries, or wrongs, which he may receive in his person, property or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws."

STATEMENT OF THE CASE

The petitioner was injured in the course of his employment on March 31, 1955. In a September 7, 1955, hearing before an examiner of the Industrial Commission of the State of Wisconsin, the main concern was with petitioner's claim for permanent disability to his stomach, back, and legs. There was limited testimony relating to whether or not petitioner's symptoms were psychoneurotically based. On November 30, 1955, the Industrial Commission of the State of Wisconsin reviewed the examiner's findings and order and issued a final order affirming his findings and order. This final order found no permanent disability.

The petitioner appealed to the Circuit Court of Dane County for judicial review. This court affirmed the Industrial Commission of the State of Wisconsin's order, and judgement was entered May 19, 1958. Subsequently this judgement was affirmed by the Supreme Court of the State of Wisconsin on January 2, 1959 (*Borum vs. Industrial Commission,* 6 Wis. (2d) 168).

On March 10, 1959, petitioner applied for Workman's Compensation due to a traumatic neurosis which arose out of injuries which he sustained in the accident of March 31, 1955. Whereupon, the employer challenged the Industrial Commission of the State of Wisconsin's jurisdiction of petitioner's application. On July 13, 1959, an Industrial Commission of the State of Wisconsin examiner heard argument solely on the question of jurisdiction. The examiner dismissed petitioner's application on September 4, 1959, and held that the Industrial Commission lacked jurisdiction. The Industrial Commission reviewed this order and affirmed it in all respects on October 7, 1959.

The petitioner sought judicial review in the Circuit Court of Dane County, which court confirmed in all respects the findings and order of the Industrial Commission of the State of Wisconsin and entered judgement November 9, 1960.

An appeal of this judgement to the Supreme Court of the State of Wisconsin was denied May 2, 1961, *Borum vs. Industrial Commission,* 13 Wis. (2d) 570. A subsequent motion for re-hearing was denied June 27, 1961.

On September 23, 1961, petitioner filed a Petition for a Writ of Certiorari to the Supreme Court of Wisconsin in the Supreme Court of the United States of America. This petition was denied December 4, 1961.

Petitioner sought a complete hearing on all of his injuries before the Industrial Commission of the State of Wisconsin on April 28, 1964, solely on the question of jurisdiction. The employer sought and obtained an absolute Writ of Prohibition in the Circuit Court of Dane County, (Appendix, page 8), Judgement filed April 24, 1964, (Appendix page 9). Whereupon petitioner ap-

pealed to the Supreme Court of the State of Wisconsin. This appeal was dismissed September 4, 1964, (Appendix page 10).

REASONS FOR GRANTING THE WRIT

Petitioner respectfully submits that the Supreme Court of Wisconsin erred in dismissing his appeal. Petitioner is incapacitated from injuries he received on March 3rd, 1955. He is currently receiving hospital treatment for these injuries and has irrefutable medical proof that his current illness is a direct result of the earlier, on-the-job injuries. He has undergone numerous operations for a stomach ulcer and for back injuries. The Industrial Commission of the State of Wisconsin committed error by not making a finding on the extent of injury to petitioner's back and leg, which still cause him suffering. These errors have not been corrected despite previous appeals. Thus petitioner has not been afforded effective redress or remedy for his wrongs.

The intention of all Workman's Compensation Laws is to protect the rights of injured workmen and to provide for medical and money benefits to employees injured by reason of their work. Article I, Section 9 of the Wisconsin Constitution guarantees a remedy in law to all persons for injuries which they receive. To permit the petitioner to be deprived of an opportunity to seek redress for all of the effects of his injuries from the Industrial Commission of the State of Wisconsin and the Courts is to deny him what the Constitution guarantees. The original hearing was inadequate in that it did not cover the full extent of the petitioner's injuries. The order emanating from such hearing is premature in its finality and should not be permitted to stand. Since the

petitioner has a right to proceed against his employer, this right should not be restricted so that he must manifest and prove even the most complicated effects of injuries on the spot or sustain injustice forever. Such a restriction would rob the Constitution of any meaning because a "certain remedy" would in fact be so uncertain as to be impossible. *Scholberg v. Itnyre,* 264 Wis. 211 (1953) 58 N.W. (2d) 698, holds that Article I, Section 9 of the Wisconsin Constitution is applicable where there is an infringement of a legal right or failure to discharge a legal duty. Petitioner's legal right to Workman's Compensation has been infringed or not fully discharged by the failure of the Commission to consider all of petitioner's injuries.

Petitioner's rights are infringed upon by the Commission and Courts' not maintaining jurisdiction in the instant case. Such an infringement violates Article XIV, Section I of the United States Constitution because the petitioner is denied a full and complete determination of the merits of his case. His privileges as a citizen are thus abridged. The New York Compensation Act recognizes and appreciates this problem and solves it granting continuing jurisdiction to their Compensation Board. *Stimburis v. Leviton Mfg. Co.* (1959), 5 N.Y. (2nd) 360, 157 N.E. (2d) 621, and *Roder v. Northern Maytag Co.* (1948), 297 N.Y. 196, 78 N.E. (2nd) 470 support the position of granting reconsideration of the extent of injuries notwithstanding previous final orders dismissing compensation applications.

CONCLUSION

Petitioner submits that the dismissal of his appeal in the instant case violates his rights to "due process" under the Constitution of the United States and a "certain remedy" under the Constitution of the State of Wisconsin. Wherefore, your petitioner prays that a Writ of Certiorari be issued out of and under the seal of the Honorable Court and the ruling of the Supreme Court of Wisconsin reversed.

Respectfully submitted,

ROBERT BORUM, *Petitioner*

By:

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APPENDIX A

JUDGMENT ALLOWING ABSOLUTE WRIT OF PROHIBITION

(Formal Parts Omitted)

An alternative writ of prohibition having been duly issued out of this Court on the 14th day of April, 1964, commanding the Industrial Commission of Wisconsin, the above named respondent, to desist and refrain from any further proceedings in a certain proceeding in which one Robert Borum is the applicant and American Motors Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland and licensed, as a foreign corporation, to transact business within the State of Wisconsin, is the respondent, which proceeding is pending before the said Industrial Commission of Wisconsin and is identified as File E32-5900, and further commanding the said respondent, Industrial Commission of Wisconsin, to show cause on the 22nd day of April, 1964, at 1:30 o'clock in the afternoon of said day, why the said respondent, Industrial Commission of Wisconsin, should not be absolutely restrained from any further proceeding in the said matter pending before it, and the said alternative writ having been served upon Stephen J. Reilly, the Secretary of the Industrial Commission of Wisconsin, on the 14th day of April, 1964, as appears from his admission of service on the original alternative writ, which is on file herein, and the said alternative writ having been served upon Lloyd A. Barbee, the attorney for the said Robert Borum, as appears from the admission of service on the original alternative writ, which is on file herein, and the matter having come on for hearing in the above named Court on the 22nd day of April, 1964, at 1:30 o'clock in the afternoon,

Alfred E. LaFrance and Adrian P. Schoone of the law firm of LaFrance, Thompson, Greenquist, Evans and Dye having appeared for and on behalf of the relator, American Motors Corporation, and Cecil T. Rothrock of the legal department of American Motors Corporation having appeared, and Norman J. Taugher, one of the examiners of the Industrial Commission of Wisconsin, having appeared with the original file of the said Commission, and no one having appeared for or on behalf of the said Robert Borum, and the said Robert Borum not having appeared, and the Court having waited until 2:10 o'clock in the afternoon of said day before proceeding to hear the matter, and no one having moved to quash the said alternative writ or otherwise made a return to the said alternative writ, and the said Norman J. Taugher having informed the Court that the respondent, Industrial Commission of Wisconsin, had no objection to the granting of an absolute writ of prohibition, and Alfred E. LaFrance having argued the said matter and having filed a written memorandum brief on behalf of the said American Motors Corporation in support of the granting of an absolute writ of prohibition, and the Court having examined the record and the verified petition for an alternative writ of prohibition of Alfred E. LaFrance, which is of record herein, and after being duly advised in the premises and having ordered and directed from the bench that an absolute writ of prohibition issue herein and having, of even date hereof, signed a written order granting an absolute writ of prohibition:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

FIRST: That an absolute writ of prohibition issue forthwith commanding the said Industrial Commission

of Wisconsin to absolutely refrain from any further proceedings in the proceeding pending before it in which Robert Borum is the applicant and American Motors Corporation is the respondent;

SECOND: That said absolute writ of prohibition, which is incorporated herein and a part hereof, be served upon the Industrial Commission of Wisconsin and a copy be served upon Lloyd A. Barbee, the attorney of record for the said Robert Borum.

Dated: April 24th, 1964.

BY THE COURT:

/s/ Jean Johnson Kirley
Clerk of Circuit Court
by /s/ Marion Mindrum

APPENDIX B

ORDER OF SEPTEMBER 4, 1964
(Title Omitted)

Sir:—The Court today announced decision in your case as follows:

#150 State ex rel American Motors v. Industrial Commission; Robert Borum, Appellant

ORDERED that the appellant's motion to amend his notice of appeal be and the same is hereby denied.

FURTHER ORDERED that the respondent's motion to dismiss the appeal be and the same is hereby granted, and the appeal is hereby dismissed.

FURTHER ORDERED that the petitioner-respondent shall recover motion costs.

Respectfully yours,

FRANKLIN W. CLARKE
Clerk of Supreme Court.